

Hearing Date and Time: November 17, 2015 at 11:00 a.m.

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**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF NEW YORK**

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In re:	:
	:
GERSHON BARKANY,	:
	:
Debtor.	:
-----X	
Marc A. Pergament, Interim Chapter 7	:
Trustee of the Estate of Gershon Barkany,	:
	:
Plaintiff,	:
	:
v.	:
	:
Alan Gerson, <i>et al.</i>	:
	:
Defendants.	:
-----X	

Chapter No. 8-14-72941-las

Chapter 7

Adv. Pro. No.: 15-8244-las

**REPLY MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANTS BRUCE
 MONTAGUE & PARTNERS, ALFRED SCHONBERGER AND JOSEPH ROSENBERG FOR
 AN ORDER DIRECTING THE JOINDER OF LUDVIK AND EVA HILMAN FAMILY
 PARTNERSHIP, L.P. AS A PARTY TO THIS ADVERSARY PROCEEDING**

On September 22, 2015, defendants Bruce Montague & Partners, Alfred Schonberger and Joseph Rosenberg (collectively, the “Moving Defendants”) filed their joint motion (the “Joinder

Motion”) for an order directing the plaintiff Marc A. Pergament, Interim Chapter 7 Trustee (the “Trustee”) to join the Ludvik and Eva Hilman Family Partnership, L.P. (the “Hilman Family Partnership”) as a party to the above-captioned adversary proceeding (“this Adversary Proceeding”). As discussed in the Joinder Motion, on November 13, 2013 the Hilman Family Partnership instituted a New York Supreme Court litigation (the “Family Partnership Litigation”) in which it seeks to recover the same \$750,000 that the Trustee now seeks to recover in this Adversary Proceeding. Therefore, even though the Family Partnership Litigation is presently stayed (because the debtor is a defendant in that litigation), that stay may be lifted, and then the Moving Defendants and all of the other defendants in this Adversary Proceeding may be subject to competing and inconsistent judgments obtained by (i) the Hilman Family Partnership in the Family Partnership Litigation, and (ii) the Trustee in this Adversary Proceeding.

Two responses to the Joinder Motion have been filed. The first response was in the form of a letter from Joel Schneck, co-counsel to Goldberg & Rimberg, PLLC (“Goldberg & Rimberg”), a defendant in this Adversary Proceeding, and also co-counsel to the Hilman Family Partnership in the within bankruptcy proceeding. It is noteworthy that Mr. Schneck does not (and, indeed, could not in good faith) deny that the Hilman Family Partnership and the Trustee are competing with each other to recover the same \$750,000, and that absent joinder of the Hilman Family Partnership as a party to this Adversary Proceeding, each of the Moving Defendants and each of the other defendants may be exposed to inconsistent judgments and double liability. Rather, Mr. Schneck asserts, without explanation, that the Joinder Motion should be “held in abeyance” until after Goldberg & Rimberg’s motion to dismiss this Adversary Proceeding against it is decided by this Court. With all due respect to Mr. Schneck, the Moving Defendants fail to see any connection between Goldberg & Rimberg’s motion to dismiss and the Joinder Motion. Regardless of the outcome of Goldberg & Rimberg’s

motion, the Moving Defendants will be faced with the potential of inconsistent judgments and double liability.

The second response to the Joinder Motion was filed by the Trustee on November 10. The Trustee, like Mr. Schneck, does not dispute the fact that the Hilman Family Partnership and the Trustee are both seeking to recover the same \$750,000 from all parties who may be liable therefor, and that the defendants in this Adversary Proceeding could be subject to inconsistent judgments without joinder of the Hilman Family Partnership as a party to this Adversary Proceeding. The Trustee simply asserts that he did not deem it necessary to name the Hilman Family Partnership as a defendant, because the Family Partnership Litigation is presently stayed. As a further explanation, the Trustee also appears to suggest that the within bankruptcy estate cannot be adversely affected by the competing claim of the Hilman Family Partnership to the \$750,000 being sought by the Trustee. The Moving Defendants disagree with the Trustee on both points. As already noted, the stay covering the Family Partnership Litigation is always subject to being lifted. Moreover, the creditors of the within estate would be adversely impacted by a future ruling which determines that the Hilman Family Partnership has a better claim to the \$750,000 than does the Trustee.

In sum, the Hilman Family Partnership should be joined as a party to this litigation because such a joinder is necessary to protect all of the defendants from inconsistent judgments related to the competing claims of the Trustee and the Hilman Family Partnership. As a separate matter, joinder also

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will be in the best interest of the within estate because it will enable the Trustee to obtain a definite and final ruling from this Court determining both (i) the Trustee's right to recover the \$750,000, and (ii) whether the Trustee or the Hilman Family Partnership have a superior right to recover some or all of that \$750,000 sum.

Dated: New York, New York
November 13, 2015

Respectfully Submitted,

/s/ Lester M. Kirshenbaum

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